

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PAUL PERRY HOOD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 60042

FILED

DEC 13 2012

TRAGIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted grand larceny. Fifth Judicial District Court, Nye County; Kimberly A. Wanker, Judge.

Appellant Michael Paul Perry Hood contends that the negotiated plea agreement was breached at sentencing, necessitating a remand to the district court for a new sentencing hearing or to allow Hood to withdraw his plea. More specifically, Hood argues that in exchange for his guilty plea, the State agreed that Hood would receive probation and the district court breached that agreement by sentencing him to prison. The district court, however, was not a party to the guilty plea agreement and was not required to impose the sentence recommended by the State or by defense counsel. Therefore, we conclude that the plea agreement was not breached by the district court.

Alternatively, Hood contends that he did not enter his guilty plea knowingly, voluntarily, and intelligently because the sentence imposed was not what was agreed to in the plea agreement. Generally, we will not consider a challenge to the validity of a guilty plea on direct appeal from a judgment of conviction. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986), as limited by Smith v. State, 110 Nev. 1009,

1010-11 n.1, 879 P.2d 60, 61 n.1 (1994). “Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding.” Id. Because there is no clear error presented in this case, we decline to address this claim here.

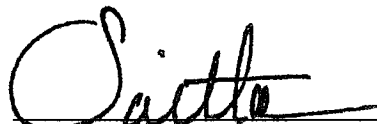
Hood also contends that the district court abused its discretion by sentencing him to prison rather than probation. He claims that the district court was biased against his medical marijuana use and the district court considered unjustified and inaccurate facts in determining his sentence. Specifically, Hood argues that the district court erred by considering (1) Hood’s drug charges and marijuana use, (2) the limited resources available to supervise probationers, and (3) that Hood had failed to acquire a job in the year since he had been charged with this crime. Hood was sentenced to a prison term of 12 to 32 months.

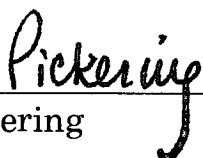
This court has consistently afforded the district court wide discretion in its sentencing decision, Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), and will refrain from interfering with the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence,” Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). The sentencing court retains the discretion to “consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant.” Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998); see also NRS 176.015(6). We note that the district court imposed a sentence that falls within the parameters provided by the relevant statutes, see NRS 193.330 (1)(a)(4); NRS 205.222(2), and that a

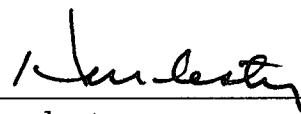
district court's grant of probation is discretionary, NRS 176A.100(1)(c). We conclude that Hood has failed to demonstrate that the district court abused its discretion when it determined that he should receive a prison sentence.

Finally, Hood argues that the district court erred by restricting his cross-examination of a witness during the sentencing hearing. It is unclear from the record if the district court's comments restricted counsel from further questioning or merely indicated that the judge was familiar with the facts. But even assuming counsel wished to further cross-examine the witness, Hood enjoys no right of confrontation at the sentencing proceeding. See generally Summers v. State, 122 Nev. 1326, 1333, 148 P.3d 778, 783 (2006) (concluding that right to confrontation does not apply in capital sentencing proceedings); see also Buschauer v. State, 106 Nev. 890, 893-94, 804 P.2d 1046, 1048 (1990). Accordingly, Hood's claim lacks merit.

Having concluded that Hood is not entitled to relief, we
ORDER the judgment of conviction AFFIRMED.


Saitta, J.


Pickering, J.


Hardesty, J.

cc: Hon. Kimberly A. Wanker, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Nye County District Attorney
Nye County Clerk